

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, see Remarks/Arguments, filed 06/26/2008, with respect to claims 1-7 have been fully considered and are persuasive. The rejections of claims 1-7 have been withdrawn.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear whether the "first part" is "data representing an audio signal," as recited in claim 1, or whether it is "text" as recited in claim 6.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Deshpande, US Pub No 2003/0076858.

**As to claim 1** Deshpande discloses a method of transmitting data over a network having initially undetermined transmission capacity, in which the data comprise a first part and at least two alternative second parts corresponding to respective different resolutions, for presentation at a receiving terminal simultaneously with the first part, said method comprising:

(a) transmitting at least an initial portion of the first part (Fig. 4: 206, 226 – a base layer is transmitted first);

(b) receiving data indicative of the available transmission capacity (Fig. 4; Fig. 5; Paragraphs 42-43);

(c) choosing among the alternative second parts, as a function of the data indicative of the available transmission capacity (Fig. 2: enhancement layers 41 or 42 are chosen to be sent, depending on which layer was previously sent and whether or not there is enough bandwidth to send the next layer; Fig. 4: 222, 226. These parts are alternative because it is not necessary for them to be sent in order for the video to be viewed); and

(d) transmitting the chosen second part and any remainder of the first part (Fig. 4: 226 – the next enhancement layer is sent if enough bandwidth is available);

wherein the first part is data representing an audio signal (Paragraph 24 – the first part is a base layer video, which contains audio, therefore this is data representing an audio signal) and the alternative second parts are alternative sets of associated video data, encoded at respective different compression rates, for presentation simultaneously with the associated audio data (Paragraph 24 – the enhancement layers

are associated video data which are encoded at different compression rates and are presented simultaneously with the associated audio data of the base layer).

**As to claim 2** Deshpande discloses a method according to claim 1 including the step of generating said data indicative of the available transmission capacity by monitoring the transmission by the network of the said initial portion of the first part (Figs. 4-6; Paragraphs 42-43).

**As to claim 3** Deshpande discloses a method according to claim t in which, in an initial time period of step (d), transmission of a leading part of the chosen second part of an extent corresponding to the extent of the first part already transmitted is performed preferentially to, or to the exclusion of, further transmission of the first part (Fig. 4: 226; Paragraph 40 - the enhancement layers are sent after the base layer finishes transmission, therefore they are necessarily transmitted preferentially to further transmission of the base layer).

**As to claim 5** Deshpande discloses a method according to claim 1 in which the first part is the base layer data of layered coded video and the second part (s) are one or more enhancement layers of the layered coded video (Paragraphs 37-42).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Desphande, as applied to claim 1 above, and further in view of Iwamura, US Pub No 2001/0028463.

**As to claim 6** Desphande discloses a method according to claim 1 in which the alternative second parts are alternative versions, having different resolutions, of a graphical image (Fig. 2: video enhancement layers 41 or 42 (i.e. graphical images of different resolutions) are chosen to be sent, depending on which layer was previously sent and whether or not there is enough bandwidth to send the next layer; Fig. 4: 222, 226. These parts are alternative because it is not necessary for them to be sent in order for the video to be viewed).

Desphande fails to disclose that the first part is text and that the graphical image is to be displayed alongside the text.

However, in an analogous art, Iwamura discloses that video streams contain audio, video and text objects (Paragraph 59).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Desphande with the teachings of Iwamura by including text in the base layer, thereby the first part would be text and the second part would be graphical images (enhancement layers of video) to be displayed with the text.

Furthermore it would have been obvious to include the text objects in the base layer in order to ensure that the text objects are received in the case that there is not enough bandwidth available to send any enhancement layers. The rationale for this modification would have been to allow text objects such as subtitles to be displayed in a video.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT HANCE whose telephone number is (571)270-5319. The examiner can normally be reached on M-F 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on (571)272-7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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